

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

LA UNION DEL PUEBLO ENTERO, .
ET AL, .
PLAINTIFFS, .
vs. . DOCKET NO. 5:21-CV-844-XR
GREGORY W. ABBOTT, ET AL, .
DEFENDANTS. .

TRANSCRIPT OF MOTION TO COMPEL
BEFORE THE HONORABLE XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE
FEBRUARY 23, 2022

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OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
SAN ANTONIO, TEXAS

1 *(San Antonio, Texas; February 23, 2022, at 10:30 a.m., via*
2 *Zoom videoconference.)*

3 THE COURT: Good morning. Let's call 21 civil 844,
4 LUPE versus Abbott.

5 Who do we have on the call on behalf of the United
6 States?

7 MR. STEWART: Good morning, Your Honor. Michael
8 Stewart for the United States, and with me is my colleague
9 Mr. Freeman for any issues on the motion to compel.

10 THE COURT: Thank you.

11 And for the Attorney General's office?

12 MR. SWEETEN: Your Honor, this is Patrick Sweeten.
13 With me today is attorney Will Thompson and Jeff White, and
14 Mr. White will be addressing the motion before the Court
15 today.

16 THE COURT: Thank you.

17 I'm sure we have several other counsel involved in
18 this case. At this point I'm not going to ask for everyone to
19 recognize themselves, but if you do later chime in on this
20 issue, I'd ask that you please state your name, who you
21 represent, so the court reporter can get an accurate record.

22 We're here today on the United States' motion to
23 compel certain information from the AG's office.

24 So let me begin with you, Mr. Stewart. It's my
25 understanding that the only field that we are still talking

1 about is the Card Status field out of TEAM, is that correct?

2 MR. STEWART: Yes, Your Honor, with a slight
3 correction. It's out of the DPS database. Otherwise, that's
4 correct.

5 THE COURT: Okay. Out of the DPS.

6 So let me try to figure out here why we need this
7 information. My understanding, the United States has two
8 claims in this case. With regard to the second claim that's
9 at issue on this, isn't this 101 claim strictly legal in
10 nature? What do we need discovery for anyway?

11 MR. STEWART: Sure, Your Honor.

12 So this is related to the 101 claim, and what we
13 would say is there are two ways to understand. What this
14 tries to fill out is the material prong -- the materiality
15 prong, rather, of the 101 claim.

16 And so we argue that, you know, in the first instance
17 you could determine materiality just by looking at what the
18 state law qualifications to vote are and comparing information
19 required to that to determine whether the error is material,
20 but, you know, the State has proffered in response to our
21 complaint the rationale that misstates the identity of the
22 voter.

23 And so what we are trying to test is sort of the
24 theoretical limits of that rationale, and so we'd say that,
25 you know, even if we're in a world where you could use

1 identity to determine qualifications, and that's material,
2 what this information will show is that some voters simply
3 aren't able to comply with that through no fault of their own,
4 that, you know, it is not enhancing the ability to determine
5 their identity to require this ID card information.

6 THE COURT: So I'm trying to figure out, how much
7 data have you already received from the AG's office, and so
8 what incremental value does this Card Status field give you
9 that you don't otherwise already have?

10 MR. STEWART: Sure, Your Honor.

11 What this Card Status shows, and it's the only field
12 that really shows this, is which voters have, you know,
13 received either a driver's license or an ID card and
14 potentially used that number in order -- you know, on their
15 voter registration, so it appears in the TEAM database.

16 And they are no longer in possession of that card,
17 and so, you know, it makes difficulty then filling out either
18 an absentee ballot-by-mail application or a valid carrier
19 envelope that would be accepted by the registrar and allow
20 them to vote by mail.

21 And so, you know, the value is really in matching,
22 you know, what's in this against what's in the TEAM database
23 to determine, you know, which voters systematically aren't
24 going to be able to get mail ballots or vote by mail.

25 THE COURT: So what happened in this initial round

1 here? Did you ask for the Card Status field initially? What
2 happened that this thing was dropped?

3 MR. STEWART: Respectfully, Your Honor, it wasn't
4 dropped. So this has been part of our ask from the beginning.
5 You know, this has been extensively negotiated with the State.
6 We were, you know, fortunately, able to come to an agreement
7 on the majority of the fields, seeking their retain or drop
8 that we've asked them for.

9 You know, as the -- near the end of this, you know,
10 we continued to insist on Card Status, the State continued to
11 insist it wasn't relevant. And we, you know, we told the
12 State as we were doing this that we reserved our right to move
13 for this later. You know, we did that both when we were
14 reaching agreement and when we were accepting the database
15 later.

16 And so, you know, we've maintained our request for
17 this. We just haven't been able to reach agreement on this
18 field.

19 You know, we did choose in the course of that a chain
20 of production of the remainder of the fields that we could
21 agree on, so that, you know, we could get started on our
22 analysis and our experts could get started on their analysis.

23 THE COURT: Thank you.

24 So I guess it goes to Mr. White. Why isn't this Card
25 Status field relevant?

1 MR. WHITE: So Your Honor, there's a lot of confusion
2 on the part of the government about exactly what this Card
3 Status field means. So I think it comes from some of the
4 labels of some of the potential statuses here use the term
5 "surrendered." And the meaning for DPS is different from what
6 DOJ believes it means.

7 Surrendered is a surrender of the license, the
8 authority to do something. And DPS is not concerned, does not
9 track in this database physical possession. As the
10 declaration of Miss Gipson says, they don't have any field in
11 the database that indicates physical possession.

12 What the field, in some instances, some conditions in
13 this field could indicate a surrender of a license. For
14 example, when the REAL ID requirements came into effect, they
15 prohibit an individual from having both a state-issued
16 identification card and a driver's license, where before that
17 used to be fine and there could have been people out there
18 that had one or both.

19 So when somebody goes to renew their driver's license
20 they go into the driver's license office, their record comes
21 up on the system, and the DPS employee sees that they have
22 two. And what they will do is they will have to surrender the
23 ID.

24 It's marked in the database and tracked, but it
25 doesn't mean that DPS took the card off of them, cut it in

1 half and threw it in the trash, because many people will show
2 up without their ID, if they have a driver's license. It's
3 not a physical possession field. It is a field to track
4 whether an ID has -- is legally valid, whether the license
5 that we once issued is now valid.

6 So there's confusion there. And it's not so -- the
7 reason that this wasn't produced is precisely for that point,
8 is that we were working repeatedly with DOJ to identify fields
9 that give them what they needed.

10 At the 26(f) conference the need for database
11 production was raised by the DOJ, who said there were a number
12 of issues, both related to security, privacy, and ensuring
13 that we wouldn't have to do this multiple times because we
14 wanted to ensure they got what they needed and there wasn't
15 confusion.

16 We discussed this on December 6th, December 9th,
17 December 14th twice, and December 15th, and we thought we had
18 reached agreement. The day it was due we once again arranged
19 request for this field and several others, and ultimately we
20 had a call with Dan Freeman and said, basically if we're going
21 to keep asking for these things we would like to bring it to
22 the Court's attention now so that we don't have to do this
23 twice.

24 The concern all along was this is a significant
25 effort for DPS employees, out of their normal course of

1 business to go pull records for 29 million Texans. It's not a
2 simple push of a button. They have to write code. They have
3 to validate the code. They have to test it. And then they
4 have to do the actual pull on a live database that's updated
5 daily.

6 And then so we did give them 29 million records, 30
7 fields for each of those 29 million people, and now here today
8 they are saying this one field is so important that we need to
9 do that process all over again.

10 We can't just pull one field. We have to repeat the
11 pull. It's a pull of 31 fields, so it's another 30-day
12 process.

13 THE COURT: Let me ask you this, Mr. White. I mean,
14 has the State of Texas produced this field in the past?

15 MR. WHITE: To my recollection, I wasn't involved in
16 the prior cases where DPS databases have been produced. In
17 the voter ID cases a large portion of the database may have
18 been produced, but in this case, it's not relevant to the
19 claims here for the reason I said.

20 To the extent that there's any relevance, which we
21 dispute, we have a separate opinion which explains why we do
22 believe it's a legal issue and there's no factual dispute that
23 really matters to this materiality question, but to the extent
24 there's any relevance, the field doesn't say what they think
25 it does and it will only lead to further confusion, disputes

1 about witnesses and experts.

2 THE COURT: So let me give you a hypothetical.

3 We got Joe. He's a Texas resident. He surrenders
4 his state ID that he used to apply to vote by mail because he
5 now has his driver's license. He just got his driver's
6 license. If he tries to use the number on his driver's
7 license to vote by mail, his ballot is going to be rejected
8 even though he's eligible to vote in the state, do you agree?

9 MR. WHITE: So I'm understanding your hypothetical
10 being the REAL ID context where an individual had the ID and
11 the driver's license, came in, renewed the driver's license,
12 and now the database may indicate that the ID was surrendered.

13 First, like I said before, he may have both cards and
14 so the field would not give you a clear indication that he
15 doesn't have the ability to provide the ID number on the ID
16 card.

17 THE COURT: Well, we are talking about a relevance
18 standard, right? So with the hypothetical I just presented to
19 you, this field is relevant, is it not?

20 MR. WHITE: Well, I believe the 26 standard is
21 actually relevance and proportionality.

22 THE COURT: We'll talk about proportionality in a
23 minute. Let's hit relevance first. Do you concede that under
24 the hypo I just gave you the field is relevant?

25 MR. WHITE: So under the hypothetical, if somebody

1 registered with one number, that number is in the voter
2 registration database, which is a separate database than
3 TEAMS, and they combine a newer number that's different and
4 that number is not in TEAMS, and those don't match, and they
5 don't provide, as an alternative, the last four digits of
6 their social security number, which is an alternative way of
7 matching data, then, yes, there could be a rejection for that.

8 THE COURT: So the field --

9 MR. WHITE: With an opportunity --

10 THE COURT: I'm sorry. Go ahead. You go ahead.

11 MR. WHITE: I was just going to say there is
12 separately an opportunity to cure if any of those issues
13 arise. Plus, there's also the ability to vote in person.

14 THE COURT: Right. And so, you know, here I'm
15 dealing with a discovery issue first, right? So I'm dealing
16 with relevance. And then so all these other issues really go
17 to when I determine the issue of materiality as a matter of
18 law, so I'm just trying to get through the discovery issue
19 first without reaching the merits. So with regard to the
20 discovery issue, I mean, there's a concession, albeit
21 reluctantly, that it's relevant.

22 So let me focus on the proportionality. The DPS
23 database, I'm assuming it's in digital form, right? You-all
24 aren't creating something new, it already exists digitally,
25 correct?

1 MR. WHITE: It's an electronic database.

2 But to select information and produce it in this
3 manner, there is an effort and it is a creation of a file.
4 It's not -- it's not as -- you couldn't just push a button of
5 the whole database and that would be it. So we do have to --
6 DPS has to code to extract particular information and produce
7 it in a usable format.

8 THE COURT: What I'm trying to understand is what DPS
9 did in this production initially. It seems to me that it took
10 more trouble to deselect fields than it did to create fields
11 for production. I mean, is that a fair statement?

12 MR. WHITE: Well, I think if you're looking at it
13 from the whole context of what we discussed at the 26(f)
14 conference, and what's happened in the past, and the effort to
15 both get the Department of Justice what they need, and to
16 avoid confusion, the multiple meet and confers we had, the
17 discussion of why this field is not going to give them what
18 they need, or what they want, like I've said here, it was a
19 whole effort to get them precisely what they needed so that we
20 wouldn't have to come back and dispute what those fields mean.

21 And so if down the road if they come back and claim
22 that Card Status actually means the physical surrender was
23 given up, then we're going to have further disputes about
24 these issues. And that's why we discussed all of this up
25 front, was to avoid that down the road.

1 So giving them everything, in the past the experience
2 at DPS in prior cases is that giving the DOJ everything they
3 misinterpret what the fields mean, as evidenced by the two
4 fields initially requested in the motion to compel that they
5 no longer request.

6 At first they said those are highly relevant and
7 important to their case. We had to come back with a DPS
8 declaration and then they abandoned it because they recognized
9 that it's not what they need. And so we got -- we talked to
10 the experts early in the process to make sure that DOJ is
11 getting what they need, to avoid disputes down the road, and
12 confusion and unnecessary delay along that basis.

13 THE COURT: Well, then, let me go back to
14 Mr. Stewart.

15 I want to make sure I understand what you think the
16 Card Status field means and why you need it. Let's go back to
17 that again, in light of what you just heard from Mr. White.

18 MR. STEWART: Sure, Your Honor.

19 I think even Mr. White's example demonstrated that,
20 you know, at least some of these statuses are going to show
21 where a card has been turned over to some voter or by a Texas
22 individual to, you know, an official and is no longer in their
23 possession.

24 I think, you know, if you look at the Gipson
25 declaration, which is Attachment 2 to the State's response, I

1 mean, there are descriptions here of items that indicate that
2 the card by definition would not be in someone's possession.
3 Voluntary Surrender, surrenders one card for another.
4 Returned by Post Office. Revoked. And then once this
5 issue is -- or Revoked Sex Offender -- once the issue to
6 re-issue the card the status is removed.

7 I think there's another one. You know, Items
8 Surrendered, the department receives the card from law
9 enforcement or found returned. So by admission any of these,
10 the card wouldn't be in the voter's possession anymore, but,
11 you know, may have been used on their registration.

12 THE COURT: Mr. White, do you want to respond? And
13 again, tell me what you believe the Card Status field means.

14 MR. WHITE: So the Card Status field means many
15 things, like if you look at Appendix A to the Gipson
16 declaration, there's a number of things that could be stated
17 in there, and essentially it's a field that tracks multiple
18 items to understand the full context of this. It's not
19 something you can define on its own.

20 So to the extent the one option is Voluntary
21 Surrender, and that's in one of the examples a person no
22 longer wants to have a Texas ID and they mark it in here, but
23 that does not mean -- again, we're getting back to the
24 confusion between surrender and actually coming into the
25 office, handing over a card, and cutting it up.

1 So people can -- an individual might write a letter
2 to DPS saying they no longer want their ID because they can no
3 longer drive and it may get marked in the system under
4 Voluntary Surrender. They still have the card.

5 Returned by Post Office means it was just
6 undeliverable. That doesn't mean somebody ever got the ID.

7 And like I said, the REAL ID example is somebody --
8 it doesn't mean they don't have the cards.

9 So there's this confusion with the term "surrender"
10 that DOJ seems to believe that that says that they came in,
11 handed the card, DPS took it from them, and put it in the
12 trash can and put it through a shredder. And that's simply --
13 this field doesn't convey that information.

14 And as the Gipson declaration says, DPS has no field
15 in any database that tracks physical possession of a
16 DPS-issued driver's license or any ID card, paragraph 8.

17 THE COURT: So in looking at the declaration, Docket
18 Number 247-2, I'm looking at page 6 of 6 of the filing, and it
19 says, "Items surrendered: Applied if the department received
20 the person's card from law enforcement or if found and
21 returned to the department."

22 So isn't this field demonstrating at least in part
23 what the U.S. Government is trying to understand?

24 MR. WHITE: So again, elsewhere in the declaration it
25 also explains that the number of these fields are -- could be

1 out of date and not maintained. There's no guarantee that if
2 something was surrendered and later given back that that's
3 accurately tracked.

4 Furthermore, this doesn't necessarily mean it was
5 physically handed over to someone because everything is
6 computerized now and my understanding is that they don't
7 necessarily -- if law enforcement confiscates a card, they
8 don't necessarily send it to DPS anymore because DPS doesn't
9 need the card, they can update the database and the card is no
10 longer valid.

11 THE COURT: So I understand all the interpretations
12 that the AG's office wants to make on this, but, again, I'm
13 dealing with a discovery dispute, and so relevant documents
14 have to be produced, and later if those relevant documents are
15 used by the proponent to make some kind of points on this
16 legal issue of materiality, then you-all are free to then
17 argue why those documents that were produced don't deserve
18 that explanation. But that's down the road.

19 We're talking about a discovery dispute here, and so
20 documents, one, are produced if they're relevant. Now let's
21 hit proportionality. The Court finds that the Card Status
22 field is relevant.

23 So with regard to proportionality, what says the
24 Attorney General's office?

25 MR. WHITE: So Your Honor, to produce this one

1 additional field requires producing all the fields again,
2 doing a complete new production.

3 So in the declaration of Mr. Crawford he explains
4 this is a four-week process. They will need to write a new
5 code, verify the code, test the code.

6 THE COURT: Well, I'm confused by that point. I
7 mean, if you already wrote a code once, I mean, how difficult
8 is it to just update that code to include the Card Status
9 field and run again?

10 MR. WHITE: Your Honor, the software development
11 to -- it's not as simple as just adding another tick box and
12 running it. You've got to go through the process of
13 identifying requirements. It's a software development process
14 to identify requirements.

15 You draft the code. You test the code. You look at
16 what is pulled and verify that it makes sense, and before you
17 ever touch a live database that's affecting records of
18 29 million Texans that's used daily by normal driver's license
19 offices, law enforcement officials, because you don't want to
20 have a space that compromises that database.

21 Furthermore, you don't want to have a rush to run
22 these pulls. You pull the data incorrectly because you didn't
23 go through these quality assurance processes, and then down
24 the road it gets identified and we have to do it again, or
25 there's allegations that information was withheld, which is

1 something that has happened in the past in prior litigation
2 where DPS was asked to rapidly produce information from their
3 database without going through the quality assurance process.

4 It resulted in certain information being
5 inadvertently omitted, experts having to be -- expert reports
6 having to be updated, people having to be deposed, pulls
7 having to be re-done. So it's critically important that you
8 don't skip these status in the process.

9 THE COURT: Thank you.

10 Mr. Stewart, so the proportionality analysis, why
11 does it bend in your favor?

12 MR. STEWART: And Your Honor, I think to a certain
13 extent some of these burden questions are moot, minus the
14 State's argument that the data they have already provided is,
15 you know, still on the point of uselessness following the
16 March Primary.

17 You know, I think the appropriate way to handle that
18 would then be to just refresh that under Rule 26(e) and we can
19 reach the whole database again anyway so that we're not, you
20 know, coming back at trial time arguing over whether this data
21 is stale. So to the extent, you know, that production is
22 going to happen anyway, the Card Status field can easily just
23 be part of it.

24 But in any event, you know, even if that weren't the
25 case, I think, you know, the fact that relevant information

1 was withheld from the first production isn't really a burden
2 argument to adding that one field. What we are not seeing is
3 that information about why this one field is burdensome just
4 by, you know, having to do it over because a relevant field
5 was withheld the first time to be burdensome, I don't think
6 you can use withholding a relevant field as a burden to defeat
7 then later producing it.

8 THE COURT: And the timetable that the State's
9 requesting, I'm hearing it's going to take four weeks in their
10 estimation to rerun with the Card Status field now included.

11 MR. STEWART: Yeah, Your Honor. I think -- sorry, I
12 didn't mean to interrupt. But the Primary is next Tuesday, so
13 I think if, you know, by the end of March we have a
14 production, I think that's perfectly fine.

15 THE COURT: Mr. White, the end of March is well
16 within the four weeks that you-all think you need to do
17 adequate programming, quality assurance, any objection to a
18 discovery deadline to produce the fields now including Card
19 Status by the end of March?

20 MR. WHITE: So I guess if I could, just to address a
21 couple of comments. To the extent the DOJ is asserting that
22 our position is that the data is going to be stale after March
23 and we would have to do this anyway, I think the point raised
24 in the motions was that instead of requiring the State to redo
25 this production for fields that don't necessarily indicate

1 what the Department of Justice believes they do, we're going
2 to have data on a large Primary and data on mail-in ballots
3 and actual data on what happened, ensure the process, what was
4 rejected and what wasn't.

5 That would be easier to obtain than redoing this
6 database production, easier to understand, and so it was
7 identified as instead of doing this we're going to have actual
8 election data they can use.

9 On the second point that there's no burden to do
10 this, and like I said before, on December 15th we had a call
11 with DOJ with Dan Freeman when they were raising this Card
12 Status on the day our response was due, and we said, "If this
13 is an issue, we want to go to the Court now. If it's not,
14 tell us you will agree to the field we are going to give you."

15 We had a call. He got off the phone and called back
16 and said they will take what we have. And we would have
17 disputed it up front to avoid specifically what we are talking
18 about now, having to do this twice. So it's not as if we
19 expected this to happen prior to litigation, and that was why
20 we had that call.

21 As far as end of March, like I said before, and it's
22 in the Crawford declaration, I think we need -- four weeks
23 would be the time, 30 days, four weeks would be the time
24 required to repeat the process.

25 THE COURT: So the Court has found that the requested

1 status or requested field of Card Status is relevant.

2 With regard to proportionality, that's dictated by
3 Rule 26(b) (1), "Unless otherwise limited by court order, the
4 scope of discovery is as follows: Parties may obtain
5 discovery regarding any nonprivileged matter" -- this is not
6 subject to privilege -- "that is relevant" -- the Court found
7 relevance -- "to any party's claim" -- that's to the United
8 States' claim here -- "and proportional to the needs of the
9 case."

10 The proportionality factors being "considering the
11 importance of the issues at stake in the action" -- this is a
12 challenge to the various provisions of SB1, it's important to
13 the citizens of the State of Texas as a whole -- the amount in
14 controversy is not a factor here -- "the parties' relative
15 access to relevant information" -- all this information is
16 within the exclusive possession of the Texas Department of
17 Public Safety and the Texas Secretary of State -- "the
18 parties' resources" -- the Attorney General's office
19 apparently has resources to pursue great amounts of
20 litigation -- "the importance of the discovery in resolving
21 the issues" -- as noted before, this is a huge case to the
22 citizenry of the state of Texas -- "and whether the burden or
23 expense of the proposed discovery outweighs its likely
24 benefit" -- that also factors into this being proportional.

25 Accordingly, the Court orders that the Card Status

1 field now be included, that production be rerun. The State is
2 to produce this information to the United States Government
3 under protective order on no later than the last day of March.

4 Anything else from the United States, Mr. Stewart?
5 Any other issues we perhaps need to nip in the bud now rather
6 than have misunderstandings later?

7 MR. STEWART: Thank you, Your Honor. I'm going to
8 turn it over to Mr. Freeman with your permission.

9 THE COURT: Yes.

10 MR. FREEMAN: Thank you, Your Honor.

11 The United States does have some concerns about the
12 pace of discovery at this point. We wanted to just bring it
13 to the attention of the Court, for this Court to be aware of
14 the status of these issues.

15 The United States served its second request for
16 production, the first being the database request seeking basic
17 information about how SB1 would be implemented, on
18 December 3rd. This included proposed search terms, search for
19 electronically stored information.

20 As of yet defendants have not produced even basic SB1
21 implementation materials or other responsive documents beyond
22 a January 4th production of a few outdated PowerPoints and
23 other peripheral materials. The bulk of what we requested has
24 not been provided, nor has the State meaningfully objected to
25 these requests.

1 Moreover, despite this Court's order, no privilege
2 logs have been produced more than 30 days after the request
3 for production deadline. At this point eleven and a half
4 weeks have passed since we served these requests for
5 production and eleven and a half weeks remain in the fact
6 discovery period.

7 The parties have not conducted depositions thus far
8 due to the lack of a document discovery. We have attempted to
9 meet and confer repeatedly to avoid unnecessary motion
10 practice, having heard Your Honor's guidance on this, but the
11 State has repeatedly promised materials and failed to meet its
12 self-imposed deadlines.

13 We remain hopeful that the State will provide some
14 delayed discovery responses soon, but to the extent that
15 delays continue, we did want to alert the Court that
16 additional motion practice may be necessary in the future.

17 THE COURT: So this is --

18 MR. SWEETEN: Your Honor.

19 THE COURT: Yeah. This is just a status conference
20 we're having at this point. There's no actual motions in
21 front of me.

22 But I guess I am curious, Mr. Sweeten, what's going
23 on?

24 MR. SWEETEN: Your Honor, first of all, this is not
25 noticed before the Court. This issue -- Mr. Freeman wrote us

1 a letter earlier this week. There is no notice to us that we
2 have to respond to these issues that he's now brought to the
3 attention of the Court.

4 You know, we have multiple people working on
5 discovery. We're fulfilling our discovery obligations. The
6 DOJ, what was left -- what I can tell you right now is what
7 was left out of his presentation is that we have provided
8 responses to first set of interrogatories. We have provided
9 responses to the RFPs.

10 We have an ongoing production. There are a lot of
11 documents that they've requested.

12 You can see here the Court told the parties at the
13 initial status conference that, you know, if you're going to,
14 you know, if you're going to do this we are going to need to
15 try to work out a way to streamline this.

16 Now the DOJ, in breach of what they told, you know,
17 our attorneys on the 15th of December is asking for a re --
18 you know, a reproduction of extensive databases. And that's
19 going to take some time.

20 What they failed to mention is that we have provided
21 the entire TEAM's database and 30 fields from the DPS database
22 which has 29 million people in them. We had to negotiate an
23 ultrasensitive protective order, but based on the sensitive
24 nature of the data we have done that. We are working on
25 production.

1 We also have, and what he also didn't mention, is
2 that we have third-party requests by DOJ, which includes
3 requests to various representatives, Representative Ashby,
4 Representative Cain, Senator Hughes, Representative Klick,
5 Representative Murr, and we have provided our objections and
6 responses to those.

7 We are still working and the production is rolling.
8 It's extensive. The requests are extensive. We've answered a
9 first set of interrogatories, first set of RFPs we've provided
10 responses to. We have provided some documents, I understand.

11 We answered the first set of RFAs. The second set of
12 RFPs, we're working on those. We have a second set of RFAs, a
13 third set of RFPs. I'm just reading my list here of the
14 various things -- and this is just one party. This is just
15 DOJ. And we have multiple parties.

16 We are answering those and we are being diligent with
17 respect to document production. It takes time for the
18 attorneys on this team to review the various requests, the
19 various productions, and those are on a rolling basis.

20 And in fact, I'm told that we will be getting
21 something out to the DOJ this week. And so we're working on
22 those things.

23 And this surprise attack, you know, without having --
24 I've got one of the -- the head of the discovery issues on
25 this SB1 case, Your Honor, is trying a case in front of

1 Judge Tipton in Houston today, and they well know that.

2 And so, you know, for us to get a surprise attack of
3 this nature, this broad, you know, request and complaining to
4 the Court without any context, without any sort of, you know,
5 full representation of what discovery obligations they have
6 put us in, you know, and all the various third-party requests
7 that I've named, and that's just DOJ. We have other parties
8 that have also sent information.

9 So the State is diligently working on producing
10 discovery, on producing documents. And if the Court -- you
11 know, and if they want to file a motion with respect to this
12 rather than to talk to us in response to Mr. Freeman's email
13 from earlier this week, they can go ahead and we'll meet that
14 request.

15 We think it probably is better to go ahead and have
16 an additional discussion with Mr. Freeman rather than him
17 bring up, without notice to the State, you know, his own
18 personal view of our responses to discovery, because, first,
19 it's wrong; and, second, it's without context; and, three,
20 it's a surprise.

21 That's all I have to say on that, Your Honor, but,
22 you know, we're certainly welcome to meet, you know, any sort
23 of motion that they have, or we're happy to also meet and
24 confer and to continue this process because we thought we had
25 met and conferred in a way that was helpful to the database,

1 and we got a -- you know, we felt like we had an agreement on
2 the 15th.

3 We were told that was acceptable. And then now here
4 we are dealing with this motion to compel, and now it sounds
5 like we're going to be doing another production of those
6 materials.

7 So Your Honor, if we could -- you know, I think this
8 surprise attack is inappropriate and I think we can better
9 respond to this if there's a motion or if there's some meet
10 and confer to be scheduled later this week or early next.

11 THE COURT: Thank you.

12 Yeah. No, like I said, I told you when I started
13 this that it's not a motion before me.

14 And so some courts, and this is one reason I guess I
15 don't adopt that practice, some courts just do a lot of
16 discovery disputes by either Rule 16 conferences or by letters
17 rather than motion practice.

18 I guess I'd prefer motion practice. We tee it up.
19 The other party has notice of what exactly is being in dispute
20 and then we resolve it. So I'm not making any orders on this.

21 I was curious, and the reason I brought the subject
22 up though about where are we at on things, I'm encouraged to
23 hear that we are doing rolling production. So I'm happy to
24 hear that we're not waiting on compiling everything and then
25 producing once we've satisfied ourselves that we have a full

1 complete production. So I encourage you-all to do rolling
2 productions so the discovery here continues on.

3 Mr. Freeman, I'll just wait -- well, one, I expect
4 you to meet and confer with Mr. Sweeten prior to the filing of
5 any motions regarding the second request for production or any
6 other outstanding discovery requests, but after you've met and
7 conferred you still believe that the documents have not been
8 produced -- I guess I'm kind of curious when you say
9 "implementation documents of SB1," I'm not sure exactly what
10 that means myself. Maybe it was more clear in the second
11 request for production, but again, I'll just wait for the
12 motions to be filed and the responses and then we'll gather
13 again.

14 In addition to waiting for additional documents,
15 Mr. Freeman, do you see any other things down the pike that we
16 need to be made aware of now?

17 MR. FREEMAN: At this point, no, Your Honor. It may
18 be that there are privilege issues that arise, but we are not
19 certain about what those may be and won't know until we
20 receive privilege logs.

21 THE COURT: Yeah. And so same thing on privilege.
22 You know, I'll wait for any privilege logs, denote any
23 documents being withheld on the basis of some privilege.

24 You know, Mr. Sweeten, I will say one thing. You
25 know, some attorney from your staff last hearing I had here I

1 think took the unusual position that privilege, legislative
2 privilege even applied to discussions with the Texas Secretary
3 of State Election Officials Department.

4 You know, if you're going to assert legislative
5 privilege, the privilege is between legislators and members of
6 their staff. If you can try to articulate a good faith basis
7 for how that's extended, I, of course, will hear it, but, to
8 me, that seems way overextended and not a good faith
9 objection, but I'll let you raise it if you think it's
10 defensible.

11 MR. SWEETEN: Your Honor, our plan is to brief the
12 legislative privilege issue to this. We are cognizant of the,
13 you know, what we believe are the contours of legislative
14 privilege, and you know, in some of that we've got, you know,
15 several orders and litigations that we've been involved in,
16 including the Perez litigation — I know you don't want me to
17 talk about Perez — but including the Perez litigation, Your
18 Honor, and we plan on — you know, we'll make those assertions
19 and of course explain those, you know, to the Court as to
20 where we think those — where we think those lines lie.

21 And so we plan to brief that issue to the Court.

22 THE COURT: So you know, if you're going to make
23 those arguments, I want to see a privilege log. I want to see
24 the "to," the "froms," all recipients. You know, do we have
25 open government or is everything hidden?

1 And I'll just posit that, just as an open-ended
2 question. I don't mean for you to respond.

3 MR. SWEETEN: Thank you, Your Honor.

4 THE COURT: Anything else, Mr. Stewart? Mr. Freeman?

5 MR. FREEMAN: Nothing else from the United States,
6 Your Honor.

7 THE COURT: Does any other attorney representing any
8 other party want to bring something up to the Court's
9 attention at this time? No one. Thank you.

10 Mr. Sweeten, Mr. White, last words, anything you-all
11 want to bring up?

12 MR. SWEETEN: Nothing, Your Honor, from the State.

13 THE COURT: Good enough. Thank you.

14 We're adjourned.

15 (Concludes proceedings.)

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17 I certify that the foregoing is a correct transcript from
18 the record of proceedings in the above-entitled matter. I
19 further certify that the transcript fees and format comply
20 with those prescribed by the Court and the Judicial Conference
21 of the United States.

22
23 Date: 02/24/22

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